IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14-3-2005

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.K.KRISHNAN

H.C.P.No.969 and 970 of 2004

H.C.P.No.969 of 2004

Faritha ... Petitioner

Vs.

1. The Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
COFEPOSA Unit,
New Delhi - 110 001.

2. Government of Tamil Nadu,
rep.by its Secretary,
Public (SC) Department,
Fort St.George,
Chennai - 600 009 ... Respondents

This Petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Habeas Corpus calling for the records of the detention order dated 10.8.2004 in G.O.No.S.R.I./930-4/2004 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Zahir Hussain Buhari, S/o.Zahir Hussain and set him at liberty now confined at Central Prison, Chennai.

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H.C.P.No.970 of 2004

Ajmal Khan ... Petitioner

Vs.

1. The Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
COFEPOSA Unit,
New Delhi - 110 001.

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2. Government of Tamil Nadu,
rep.by its Secretary,
Public (SC) Department,
Fort St.George,
Chennai – 600 009 ... Respondents

This Petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Habeas Corpus calling for the records of the detention order dated 10.8.2004 in G.O.No.S.R.I./929-3/2004 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Ajmal Khan Haroon Rasheed, S/o.Ajmal Khan and set him at liberty now confined at Central Prison, Chennai.

For Petitioners : Mr.B.Kumar, Sr.Counsel
for Mr.N.Raja Senthoor Pandian

For 1st Respondent : Mrs.Vanathi Srinivasan,
ACGSC

For 2nd Respondent : Mr.V.Arul,
Government Advocate

COMMON ORDER

(Order of the Court was made by P.SATHASIVAM, J.)

In H.C.P.No.969 of 2004, the wife of the detenu challenges the detention order dated 10.8.2004, detaining the detenu, her husband Zahir Hussain Buhari under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA Act).

2. In H.C.P.No.970 of 2004, the father of the detenu by name Ajmal Khan Haroon Rasheed, challenges the order of detention dated 10.8.2004, detaining him under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA Act).

3. Since the grounds of detention and the question raised in both the petitions are similar and identical, they are being disposed of by the following common order.

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4. After taking us through the grounds of detention and all other connected materials, Mr.B.Kumar, learned Senior Counsel appearing for the petitioner initially submitted that the Detaining Authority has not properly applied its mind while considering the relevant materials, particularly the version of the detenu dated 9.8.2004 and its translated version by the Sponsoring Authority. According to him, those materials have been relied on by the Government while passing the impugned order of detention. In the light of glaring error in the translated version from Tamil to English and in the absence of any clarification by the Sponsoring Authority, the ultimate order of detention is vitiated.

5. On the other hand, the learned Government Advocate would submit that the reading of the entire materials show that it is only a typographical error. Even otherwise, those materials have not been relied on by the Detaining Authority and accordingly no prejudice would be caused to the detenu.

6. In the light of the contentions raised by the learned Senior Counsel appearing for the petitioners and after perusal of the materials placed, we are inclined to accept the same and there is no need to refer to the other contentions. Accordingly, we consider and answer to the only contention raised above.

7. In so far as H.C.P.No.969 of 2004 is concerned, the statement of the detenu made on 9.8.2004 from Central Prison, Chennai, which finds place on pages 86 and 87 of the booklet supplied to the detenu shows that his alleged confession was made involuntarily. The following is the text of Tamil version as found in page 87 of the booklet,

> "... நான் மறுக்கவே என்னை அடித்து மிரட்டி கையெழுத்திட வைத்தார்கள். அது போல் ஒரு தன்னிச்சையற்ற வாக்கு மூலத்தையும் எழுதி வாங்கினார்கள். ,,,"
>
> (Emphasis Supplied)

Since the above statement is in Tamil, the same has been translated into English and communicated to the addressee, namely, the Intelligence Officer, Directorate of Revenue Intelligence, T.Nagar, Chennai-17, which finds place at page 96 of the booklet. The equivalent English translation as found at page 96 is as follows,

> "... When I refused, by beating and threat, they made me to sign. Similarly, they also took a voluntary statement. ..."
>
> (Emphasis supplied)

When a reply was sent by the Directorate of Revenue Intelligence in their letter dated 10.8.2004 to the detenu through the

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Superintendent of Central Prison, Chennai, which document also finds place in page 97 and 98 of the booklet shows that the Officers had taken a voluntary statement from the detenu. The following sentence used in para 4 is relevant, which reads as under,

> "... that the officers also took a voluntary statement in which the officers asked you to write as per the dictation of the officers; ..."
> (Emphasis Supplied)

Since the detenu is not conversant with English language, the above said letter dated 10.8.2004 has been translated into Tamil and the same was supplied to the detenu, which also finds place at page 99 and 100 of the booklet. Here again, in the translated copy, particularly at page 100, it is mentioned as,

> "... விசாரணையின் போது தாங்கள் ஒரு தன்னிச்சையான வாக்குமூலத்தைத் தங்களது கைப்பட அளித்துள்ளீர்கள் எனக் காணப்படுகிறது. ..."
> (Emphasis Supplied)

The above referred passages make it clear that though the detenu has specifically stated that the statement was obtained from him involuntarily, while communicating the same, it was wrongly translated and the same was accepted by the Sponsoring Authority. We are satisfied that there is a glaring error in the translated version.

8. Now, we shall consider whether those materials referred above have been relied on by the Detaining Authority. In the grounds of detention in para (xv) it is stated that,

> "The Government have taken into consideration the averments/contentions contained in the bail petition, representations, but from the material placed on record, the Government are satisfied that the same are baseless, and devoid of merit and hence the Government reject the same. ..."

The above referred ground makes it clear that the Detaining Authority considered not only the bail petition, representations, but also the materials placed on record. In such circumstances, we are satisfied that the above referred statement of the detenu and its translated version have been considered and rejected. There is no doubt in holding that those materials have been relied upon by the Detaining Authority while passing the order of detention and this material error has not been noticed by them.

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9. In this regard, the learned Senior Counsel appearing for the petitioners brought to our notice the earlier Division Bench decision of this Court dated 12.8.2004 made in H.C.P.NO.351 of 2004 (S.Seematti v. The Secretary, Government of Tamil Nadu and two others), in which one of us is a party (P.S.,J.). In that case, in the annexure to the mahazar dated 16.1.2004, details regarding Indian Currencies recovered from the check-in baggages were furnished. Though in the English version it is stated as "Indian Currencies", in Tamil version it is stated as "Foreign Currencies (btspehl;L gzj;jhs;fspd; tptu';fs;)". After considering the same and the grounds of detention, the Division Bench has concluded that the contents of the mahazar were not correctly translated and accordingly, the ultimate proceedings and the order of detention were quashed.

10. Another Division Bench decision of this Court dated 21.9.2001 made in H.C.P.No.2676 of 2000 (Kattu Bawa v. The State of Tamil Nadu and two others) has also been brought to our notice, wherein while referring the "bail petition", it has been stated as "quash proceeding". After verifying the same, the Division Bench held that the Detaining Authority without properly applying his mind to the above aspect of the case, has mechanically stated in the Detention Order that the petitioner has filed a bail application before the High Court and after finding that the Detaining Authority without applying his mind has mechanically passed the order of detention, quashed the same.

11. In the light of the principles laid down in the above decisions and in view of the error as pointed out in the case on hand, by applying the same we are of the view that the impugned detention order cannot be sustained.

12. Coming to H.C.P.No.970 of 2004, as stated earlier, identical grounds of detention have been raised, similar statement was made by the detenu and that similar translation was done by the Sponsoring Authority. Those materials are available at page 57, 65 and 67 of the booklet supplied to the detenu. For the reasons mentioned in the earlier case, by applying the same analogy, we hold that the impugned detention order in this case is also liable to be set aside.

13. H.C.P.No.969 of 2004: The Habeas Corpus Petition is allowed. The impugned order of detention dated 10.8.2004 in G.O.No.S.R.I./930-4/2004 is quashed. The detenu Zahir Hussain Buhari is ordered to be set at liberty forthwith unless his detention is required in connection with any other case.

14. H.C.P.No.970 of 2004: The Habeas Corpus Petition is allowed. The impugned order of detention dated 10.8.2004 in G.O.No.S.R.I./929-4/2004 is quashed. The detenu Ajmal Khan

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Haroon Rasheed is ordered to be set at liberty forthwith unless his detention is required in connection with any other case.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government, Public (SC) Department,
   Fort St.George, Madras - 600 009.

2. The Secretary to Government of India, Ministry of Finance,
   Department of Revenue (COFEPOSA Unit)
   New Delhi - 110 001.

3. The Superintendent of Central Prison, Central Prison,
   Chennai - 5.

4. The Joint Secretary to Government, Public (Law and Order),
   Fort St.George, Chennai - 9.

5. The Public Prosecutor, High Court, Madras -104.

6.The Sub Asst.Registrar COFEPOSA
  High Court, Madras.

1 cc to Ms. Vanathi Srinivasan, ACGSC, SR. 12092
2 ccs to Mr. N. Raja Senthoor Pandian, Advocate SR. 11937 & 11938

H.C.P.No.969, 970 of 2004

TEJ (CO)
kk 19.3.05

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